



Virginia
Regulatory
Town Hall

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Exempt Action Final Regulation Agency Background Document

Approving authority name	State Air Pollution Control Board
Primary action	9 VAC 5-140
Secondary action(s)	None
Regulation title	Regulation for Emissions Trading
Action title	CAIR Emissions Trading Programs (K07)
Date this document prepared	January 20, 2009

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 A of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99)

Summary

Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment.

Below is a brief summary of the substantive amendments the Department is recommending be made to the regulations.

1. The definitions of "CAIR NO_x Annual Trading Program", "CAIR NO_x Ozone Season Trading Program", "CAIR SO₂ Trading Program", and "Permitting authority" in 9 VAC 5-140-1020, 9 VAC 5-140-2020, and 9 VAC 5-140-3020 have been amended to clarify that they are not intended to create trading programs only for sources geographically located within the borders of the Commonwealth of Virginia. Therefore, qualifying sources within the Commonwealth are to become full participants in the EPA-administered regional CAIR trading programs for annual NO_x, ozone season NO_x, and annual SO₂, along with sources permitted by authorities in all other States that are participating in the regional CAIR trading programs. The new language clarifies that the regulations should not be interpreted to limit the trading program to Virginia sources, which would be contrary to the intention that sources covered by other States' approved CAIR rules or by the CAIR FIP may trade allowances with sources in the Commonwealth. In addition, the provisions of 9 VAC 5-140-1010, 9 VAC 5-140-2010, and 9 VAC 5-140-3010 have been amended to reflect this clarification.

2. The definition of "Most stringent state or federal NOx emissions limitation" in 9 VAC 5-140-1020, 9 VAC 5-140-2020, and 9 VAC 5-140-3020 has been amended to clarify that the primary fuel, where it is not designated in the permit, is the fuel that would result in the lowest emission rate.

3. The definition of "Cogeneration unit" in 9 VAC 5-140-1020, 9 VAC 5-140-2020, and 9 VAC 5-140-3020 has been amended to so that most units co-firing biomass will be exempt from CAIR. Specifically, the calculation methodology has been removed for the efficiency standard in the cogeneration unit definition to exclude energy input from biomass making it more likely that units co-firing biomass will be able to meet the efficiency standard and qualify for exemption from the rule. In these same sections, technical amendments were made to add a new definition of "Biomass" and revise the definition of "Total energy input".

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On December 16, 2008, the State Air Pollution Control Board took final action to adopt amendments to a regulation entitled "Regulation for Emissions Trading", specifically CAIR Emissions Trading Programs (Parts II, III and IV of 9 VAC 5 Chapter 140). The regulatory action is to be effective as provided in the Administrative Process Act.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. Environmental Protection Agency (EPA) regulations.

In adopting these amendments, the Board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

Additional Information

Please indicate that the text of the regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.

Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the regulation and that it comports with applicable state and/or federal law.

If the exemption claimed falls under § 2.2-4006 A 4 c of the APA please identify the federal law or regulations being relied upon for the final agency action.

The text of the regulation is attached.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Letters providing written assurance from the Office of the Attorney General that (i) the Board has statutory authority to promulgate the final regulation amendments and (ii) the amendments qualify as an exemption under § 2.2-4006 A 4 c of the Administrative Process Act are available upon request.

In a regulatory action, on March 10, 2005 EPA promulgated the Clean Air Interstate Rule (CAIR). Based on the Clean Air Act requirements for states to address the interstate transport of air pollutants, this rule finds that 28 states, including the District of Columbia, contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS for 8-hour ozone and PM_{2.5} pollution in downwind states. The 28 states identified in the CAIR must submit SIPs that will achieve the emission reduction requirements in the CAIR by September 11, 2006. States that submit an approvable SIP to satisfy the requirements of the CAIR will satisfy the requirements in the EPA's findings notice (70 FR 25162, May 12, 2005) related to § 110(a)(2)(D).

By letter of September 12, 2007, EPA Region III notified DEQ of the results of a review of the CAIR provisions of 9 VAC 5 Chapter 140, submitted as a SIP revision by the Commonwealth of Virginia on April 30, 2007, to determine whether the regulations are consistent with the requirements of the federal CAIR program. In that letter, EPA identified several areas of concern that might cause confusion in the interpretation of the proposed regulatory language and indicated that corrections needed to be made for EPA approval of the program. By letter of September 17, 2007 from the DEQ to EPA, Region III, DEQ stated that it concurred with EPA interpretations of certain aspects of the regulations and committed to correcting those issues as soon as practicable.

On October 19, 2007 (72 FR 59190), EPA took final action to revise the definition of a cogeneration unit under the Clean Air Interstate Rule (CAIR) so that most units co-firing biomass will be exempt from the rule. EPA also made several other technical amendments to CAIR.

Family Impact

Assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

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